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Productions, LLC and Ryan A. Brooks

9
10 **UNITED STATES DISTRICT COURT**
11 **CENTRAL DISTRICT OF CALIFORNIA**

12 GOLD GLOVE PRODUCTIONS,
13 LLC, a California Limited Liability
Company and RYAN A. BROOKS, an
14 individual,

15 Plaintiffs,

16 v.

17 DON HANDFIELD, an individual,
TRESSA DIFIGLIA HANDFIELD, an
18 individual, RANDY BROWN, an
individual, MICHELE WEISLER, an
19 individual, CHARLES FERRARO, an
individual, JAY COHEN, an individual,
20 ROBERT LORENZ, an individual,
UNITED TALENT AGENCY, INC., a
California corporation, THE GERSH
21 AGENCY, a California corporation,
WARNER BROS. PICTURES INC., a
22 Delaware corporation, MALPASO
PRODUCTIONS, LTD., a California
23 corporation, WARNER BROS.
DISTRIBUTING INC., a Delaware
24 corporation, WARNER BROS. HOME
ENTERTAINMENT INC., a Delaware
25 corporation, WARNER BROS.
DOMESTIC TELEVISION
26 DISTRIBUTION INC., a Delaware
corporation, TW UK HOLDINGS INC.,
27 a Delaware corporation, and DOES 1-
10, inclusive
28

Case No. CV13-07247-DSF (RZx)

**PLAINTIFFS' OPPOSITION TO
WARNER DEFENDANTS'
MOTION FOR SUMMARY
JUDGMENT**

FILED HEREWITH: STATEMENT
OF GENUINE DISPUTES OF
MATERIAL FACT; OBJECTIONS TO
AND MOTION TO STRIKE,
DEFENDANTS' SUPPORTING
DECLARATIONS; PLAINTIFFS'
MOTION FOR RULE 56(D)
CONTINUANCE; DECLARATION
OF JEFFREY LIU; DECLARATION
OF DAVID YERKES;
DECLARATION OF RYAN
BROOKS; DECLARATION OF
SHERIL ANTONIO; DECLARATION
OF FRANK HICKS; DECLARATION
OF LARRY STEWART;
SUPPLEMENTAL DECLARATION
OF LARRY STEWART;
DECLARATION OF TREVOR
RESCHKE; [PROPOSED] ORDER
DENYING WARNER DEFENDANTS'
MOTION FOR SUMMARY

Defendants.

JUDGMENT; [PROPOSED] ORDER
GRANTING RULE 56(D)
CONTINUANCE

The Hon. Dale S. Fischer

DATE: February 24, 2014
TIME: 1:30 p.m.
COURTROOM: 840

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I. Summary of Argument

Plaintiffs submit that the Motion for Summary Judgment filed by Defendants Warner Brothers Studio Enterprises Inc., et al. is not supported by uncontroverted admissible evidence, is premature, and does not carry Defendants' burden with respect to proving a prior creation defense as a matter of law. This Opposition offers clear and convincing proof that Defendants' testimony and other alleged evidence rests upon fraudulent documents and things.

Former United States Army Counterintelligence Special Agent and digital investigator, Trevor Reschke, fully and properly examined the source of the scripts referenced in all the Moving Parties' Declarations. He examined 13 floppy disks, on which Defendant Brown claims to have stored the scripts evidencing his prior creation. Mr. Reschke found clear evidence that the date/time stamps of the disks were manipulated to present inaccurate information about date of creation. He also found that (i) there were codes within the data examined that relate to an operating system not on the market during the alleged dates of creation for these scripts, and (ii) that the 3M Imation 3.5 inch disks had not been put on the market during the time Mr. Brown says he created and saved scripts to this specific brand of floppy disks. Mr. Reschke opines that there is evidence of computer processes that could only happen with today's modern computers. Finally, Mr. Reschke found forensic evidence that a "cleaning" or "wiping" program was used to alter content that pre-existed on certain of the disks. Mr. Brown admitted under oath he did not know what a "cleaning" or "wiping" system was and had never used one. He did say that defense counsel sent a "computer professional" to the door of his house and that they took his "floppy discs" and have not returned them. Mr. Reschke concludes in his detailed forensic report as follows: "The forensic examination conducted on the floppy disks detailed in this report leads me to believe that they have been manipulated to provide the appearance of disks used from 1990 to 2003; they contain system information not consistent with the dates of use suggested by the

1 date time stamps present, manipulated date time stamps, signs of file wiping, and
2 indications of activity that is not plausible. There are various anomalies and
3 indicators that these disks were manipulated to look as if they were truly being used
4 at the time periods alleged, when based upon our examination that is not plausible
5 or possible for the reasons stated in this report.” See Decl. of Trevor Reschke
6 (“Reschke”) Decl. ¶5, Ex. 2

7 Defendants’ evidence is also claimed to be supported by an alleged original
8 printout of a 1998 Innovative Arts *Trouble with the Curve* script Mr. Brown said he
9 “found” stored in his home, and several documents that Mr. Brown testified under
10 oath are full of his original ballpoint pen written notes regarding the infringing
11 script that he allegedly wrote in 1997-98. (This “evidence” was not provided until
12 69 days after Defendants were served with the Complaint). As a result, Plaintiffs
13 asked Former Questioned Document Examiner and National Expert on Matters
14 Concerning Ink for the United States Secret Service, Larry Stewart, to conduct a
15 complete and proper forensic examination of these supposedly original documents.

16 Mr. Stewart employed reliable ink dating techniques and concluded that inks
17 in these documents were not written in or about 1998, but instead in the last two
18 years. Mr. Stewart further found that two spiral notebooks examined, each of
19 which had bar codes and information about the manufacturer, had not yet been
20 made commercially available for purchase during the period they were alleged to
21 have been owned and used by Mr. Brown. Mr. Stewart found that the toner used to
22 print out the claimed original script that has been allegedly kept since circa 1998 is
23 associated with an office machine system that did not exist until years later.
24 Finally, Mr. Stewart found the materials he examined had been compromised.
25 There were 60 pages professionally torn out of the documents examined. Mr.
26 Stewart concluded as follows: “These results in combination yield a highly
27 probable conclusion that the Exhibit Q1 through Q4 document collection was not
28 produced in 1997-98, but instead much more recently.” See. Decl. of Larry Stewart

1 (“Stewart Decl.”) ¶26.¹

2 These forensic reports provide clear and convincing proof that Defendants
3 have offered evidence that has been manipulated and fabricated. All three forensic
4 experts are willing to appear in Court for an evidentiary hearing on the issue of
5 whether testimony has been offered to this Court based upon manipulated and
6 fabricated documents and things. This evidence alone controverts the claim of an
7 authentic prior creation by Mr. Brown.

8 There is substantial other clear and convincing evidence that proves the
9 evidence offered by Defendants is fabricated and not true. Mr. Brown gave two
10 documented public interviews in October 2012 regarding *Trouble with the Curve*
11 (well before this litigation). He stated clearly in both that he allegedly wrote the
12 first draft of this screenplay in or about 2002 (while now testifying he allegedly
13 wrote it six to ten years earlier). Mr. Brown testified in his deposition that he was
14 truthful when he gave that interview. Now he claims he first conceived of and
15 wrote his drafts starting in 1996.

16 In fact, Mr. Brown testified in his deposition that he originally wrote
17 something quite different under the name *Trouble with the Curve* that was mostly a
18 “cartoonish,” “comedic,” romantic comedy about a male and female scout who
19 scouted the same player and fell in love. Mr. Brown admits what he wrote was
20 such a light comedy he did no research on scouts and did not know much about
21 scouting. Mr. Brown has not produced that script for review.

22 Also, the fabricated scripts are implausible when viewed along a historical
23 timeline of when certain things could be known to have occurred. Nearly all the
24 fabricated scripts (those printed out from the fabricated floppy disks, and the non-
25 authentic Innovative Arts printout) include a scene that Mr. Brown said he wrote in

26
27 ¹ Mr. Brown also testified that he was the only one to write the folder names on the labels on the floppy discs and to
28 use them. Certified Forensic Document Examiner and Handwriting analysis expert, Frank Hicks, who founded and
ran the Questioned Documents Section of the Mississippi Crime Laboratories for twenty four (24) years, has opined
that a proper handwriting analysis of the labels indicate that there are at least two, if not more, writers who wrote on

1 1996-98: they each involve a Major League Baseball Scouting Director akin to Paul
2 DePodesta using a wireless laptop to tap into real time minor league at bats, and
3 reading out advanced baseball metrics. Mr. Brown testified he had no ties to Major
4 League Baseball or scouting, and admitted to knowing nothing about scouting
5 departments in the MLB at all. This “smoking gun” scene depicts a phenomenon
6 called *Moneyball*, which was unveiled in the book by that name written by noted
7 author Michael Lewis in 2003. Mr. Lewis’ book, once published, made known to
8 persons outside of the Oakland Athletics organization a practice the A’s General
9 Manager Billy Beane was secretly honing and carrying out with Paul DePodesta in
10 early 2000-2003: it involved laptops, Ivy League “suit” types, software with real
11 time tie-ins to games underway and advanced baseball metrics. Not until the years
12 thereafter (2004-2007) did this catch on with other MLB teams. Mr. Brown admits
13 to having read the book entitled *Moneyball* and having seen the movie *Moneyball*
14 released on September 23, 2011. It was impossible for him to have foreseen, much
15 less written those *Moneyball*-like scenes in 1996-1998, yet he claims he did.
16 Baseball General Managers and experts on the history of the MLB, Gerry
17 Hunsicker of the Dodgers, and Tal Smith have provided their expert declarations to
18 the Court to share that not even those who were the MLB’s top executives knew of
19 the future use of laptops, high tech sabermetrics, and real time software in Scouting
20 Departments (especially for scouting amateur players) until 2004 or 2005.

21 This “*Moneyball* scene” was so obvious that Mr. Brown was asked about
22 this point blank in one of his two interviews. The interviewer expressed that this
23 scene seemed to be playing off *Moneyball*, the book and later movie. In those
24 interviews, Mr. Brown firmly stated he started writing his version of *Trouble with*
25 *the Curve* precisely one year before the book *Moneyball* came out, in 2002. To do
26 so, he would have had to be clairvoyant. Now he claims to have foreseen this even
27 earlier; i.e., in 1996, although knowing nothing about MLB scouting either then or

28 the labels of the floppy discs. This is directly at odds with what Mr. Brown stated under oath.

1 now.

2 Some of the facts found in these fabricated 1996-2000 scripts relate directly
3 to Plaintiff Ryan Brooks' own notable high school and college baseball career. Mr.
4 Brown cannot explain how this happened. Mr. Brown cannot give the inspiration
5 for most of the writing that is found in the production version of *Trouble with the*
6 *Curve*. Mr. Brown spoke most about some scenes he himself called "comedic" and
7 "cartoonish." Those "cartoonish" and "comedic scenes" – few in number – seem
8 to date back to what he may have really written in the 90s which appears to have
9 been a very different screenplay or television script than what the infringing
10 *Trouble with the Curve* became. Mr. Brown admits that much of the August 2011
11 production script contains material added at the behest of others in the summer of
12 2011, long after Plaintiff Gold Glove Productions' copyrighted works were
13 completed. *See* Declaration of Jeffrey Liu ("Liu Decl."), Ex. F at p. 245, ln. 23-45;
14 p. 252, ln. 1-2, 5-7; p. 253, ln. 1-8; p. 258, ln. 16-20, 22-25; p.259, ln. 1-3, 10-16; p.
15 260, ln. 22-24; p. 262, ln. 22-24.

16 Mr. Brown admitted he himself registered with the Writer's Guild the few
17 actual TV show scripts he wrote as spec scripts. He admitted he most always had
18 adequate and in some cases, very well-known agents, transactional attorneys, and
19 personal managers, and that he took writing extension courses in which he was
20 likely taught about the need to copyright one's work. Yet, he admits he has no
21 Writers' Guild Registration or Copyright Registration to offer with respect to these
22 alleged prior created drafts of *Trouble with the Curve*, even though he claims to
23 have optioned the script to a production company and passed it all over town. This
24 is not plausible either.

25 Additionally, one of the most established authorship experts, Professor David
26 Yerkes of Columbia University, read all of Defendant Don Handfield's scripts and
27 those scripts of Mr. Brown that can be authenticated. Mr. Yerkes provides an in
28 depth authorship analysis with respect to the August 2011 production script (which

1 very closely aligns with the infringing motion picture). He opines that the true
2 author of the August 2011 script is Don Handfield, unequivocally, and that it's
3 nearly impossible to conclude otherwise. Professor Antonio, the Associate Dean of
4 New York University's Tisch School of the Arts, shares this opinion having arrived
5 at this conclusion through her own authorship analysis, independent of Professor
6 Yerkes. They both also opine, having read Mr. Brown's few authentic works, that
7 he absolutely is not the author of the script that lead to the film entitled *Trouble*
8 *with the Curve*. There is hence no issue of access. This is because the actual author
9 of *Trouble with the Curve*, Mr. Handfield, irrefutably wrote the copyrighted work
10 *Omaha* as a work for hire for Plaintiff Gold Glove Productions – and then acting
11 with others, harvested therefrom the unique father-daughter drama and transplanted
12 it within the film that became *Trouble with the Curve*. Mr. Handfield has yet to be
13 deposed and has offered no declaration to this Court.

14 Moreover, Plaintiffs copyrighted all of their works, and some of them well
15 before when it was that those involved in the production of *Trouble with the Curve*
16 finally copyrighted the infringing work (in production of the film). Under 17
17 U.S.C. Section 410(c), Plaintiff's registration certificates constitute prima facie
18 evidence of the validity of its copyrights. Because originality is necessary for
19 validity, the certificate is prima facie evidence of originality. Therefore, to sustain
20 their burden of overcoming this statutory presumption of originality of Plaintiff's
21 work, and to be able to prove prior creation, the Moving Parties must show that
22 Plaintiffs copied the "idea" of the "prior source and its expression." See e.g. *N.*
23 *Coast Indus. v. Jason Maxwell, Inc.*, 972 F.2d 1031, 1033 (9th Cir. 1992); *Leeds*
24 *Music Limited v. Robin*, 358 F.Supp. 650, 659–60 (S.D.O. 1973). The Defendants'
25 moving papers don't even address this point or burden.

26 Finally, under Rule 56(d), Plaintiffs are entitled to discovery before a
27 dispositive ruling on this record. Defense counsel has to date limited Plaintiffs to
28 only those depositions of its choice and has allowed only two. Plaintiffs have filed

1 concurrently herewith a Rule 56(d) motion with a supporting declaration.

2 **II. Statement of Genuine Issues of Material Facts**

3 **A. The Plaintiffs and Their Copyrighted, Original Works**

4 Ryan Brooks is the founder of Plaintiff Gold Glove Productions. He was a
5 high school and college baseball standout. He played third base (as does the Bo
6 character of *Trouble with the Curve*) his entire career, which was shortened by an
7 injury (like the Johnny character in *Trouble with the Curve*). He was scouted
8 heavily throughout (like the Bo character in *Trouble with the Curve*), went to the
9 college World Series which was played at Rosenblatt's Stadium (referenced
10 specifically by name in *Trouble with the Curve*) and ate their famous pastrami
11 sandwiches (also referenced in *Trouble with the Curve*). Docket No. 76 at 2, 10,
12 also see Docket No. 93 at 180, 224, 242. His college coach at the University of
13 Texas at Austin was Augie Garrido, who is known to be an older, grumpy,
14 irascible, cursing baseball icon. Coach Garrido and his mannerisms and personality
15 left an indelible mark on Plaintiff Ryan Brooks over the years. See Decl. of Ryan
16 Brooks ("Brooks Decl.") ¶9, Ex. H and Liu Decl. Ex. E. Mr. Brooks lost his Mom
17 to cancer after college. While with his mother in her last months, she shared with
18 him that as an only child and daughter to her estranged father, she had always felt
19 pushed away and frustrated. This was an emotional time and remembered to this
20 day by Plaintiff Mr. Brooks.² Docket No. 76 at 2-3.

21 In late 2004, Mr. Brooks was kicking around the idea of a baseball story
22 about a player dying of cancer, and he was looking for a solid writer to draft a
23 baseball screenplay as a work for hire for his production company in collaboration.
24 He chose the prolific writer, Don Handfield. Mr. Handfield was steeped in
25 knowledge about Ohio State football, but not baseball, so the two undertook weeks
26 of intense research. They went to college baseball games, met college coaches,

27
28 ² Mr. Brooks' production company, Gold Glove Productions, won an Academy Award last year in connection with the film, *Inocente*. See Docket 76 at 1-2.

1 many scouts, announcers and players. They spent weeks at the College World
2 Series at Rosenblatt's Stadium, in fact eating hot pastrami sandwiches, as ideas Mr.
3 Handfield had, Ryan's mother's story about being an estranged daughter and the
4 snapshots of the older, irascible coaches, like Augie Garrido, all came together.
5 Piece by piece these formed into a unique, compelling and dramatic father/daughter
6 baseball story: one about an elderly baseball lifer and long-time widow facing the
7 last year under his contract and an illness he was ignoring and hiding – all while he
8 tries to reconcile with his only child and 31 year old daughter with whom he has a
9 dysfunctional relationship. *Id* at 7 and Brooks Decl. Exs. F, I.

10 By July, 2005, Mr. Handfield and Mr. Brooks had a complete draft of
11 *Omaha*, with the full main frame of this unique father/daughter baseball story. This
12 included the father driving an older car, swiping it against the garage, his smoke
13 alarms going off in the kitchen, and drinking scotch when sad. It also included his
14 daughter leaving behind her job to come move into his life and her discovery of his
15 hidden illness. In their script, this was followed by a choppy at first, but then
16 lovely reunion, where the daughter asks her father to break down and play some
17 baseball just with her, all this, during which she falls in love with a younger version
18 of her father. The Handfield/Brooks team worked toward a second complete draft,
19 where the goal from that point on was to develop the daughter character to be more
20 educated, modern and healthy in contrast to her father, and to develop also her love
21 interest. Docket No. 76 at 7 and Brooks Decl. Ex. I.

22 On May 15, 2006, Mr. Brooks registered the May 10, 2006 draft of *Omaha*,
23 his unique, and original father-daughter baseball story. See Brooks Decl. Ex. A (a
24 true and correct copy of the official USCO copyright report from May 10, 2006 for
25 *Omaha*). These rights were later assigned to his production company, Plaintiff,
26 Gold Glove Productions, and that assignment was recorded with the United States
27 Copyright Office. See Brooks Decl. ¶3, Ex. B and Docket No. 76 at 7. The two
28 gentlemen went their separate ways in late 2006 due to other business

1 commitments. Mr. Brooks, however, brought Mr. Handfield back in the summer of
2 2008, under another work for hire agreement that incorporated the first, to nail
3 down a final draft that could be used to head into production. Mr. Brooks gave Mr.
4 Handfield detailed notes regarding the need to make the daughter even more
5 educated and independent, to deepen the story regarding her love interest who was
6 a colleague of her father's in his baseball job, and for there to be a moving scene
7 where the father apologizes for having pushed his daughter away. Mr. Brooks not
8 only gave these specific notes to Mr. Handfield, he kept them, and has provided
9 them to the Court. Docket No. 76 at 11, 12 and Brooks Decl. Ex. G (a true and
10 correct copy of the notes Brooks gave to Handfield for an *Omaha* polish in 2007).
11 He also spent a good bit of money producing a trailer of what the movie might look
12 like and included clips of montages that he wanted developed, including having the
13 father smoking a cigar, and the daughter being visibly upset when she discovered
14 her father was sick. The concept real was registered for copyright protection
15 because of the importance of that work. Docket No. 76 at 10 and Brooks Decl. ¶9-
16 10, Ex. F.

17 A dispute broke out between Mr. Brooks and Mr. Handfield because Mr.
18 Handfield greatly delayed the turning in of the final script, and also surprisingly
19 seemed to take this story well off its intended path. They exchanged lawyers' letters
20 copied to, among others, the Defendant Charles Ferraro at the United Talent
21 Agency (who later became the agent to both Handfield and Brown). The parties
22 simply went their separate ways, this time, for good. ³

23 Mr. Brooks then discovered, in stages, that Defendants were producing a
24 father/daughter story, which in all respects was nearly identical to his own, but for
25 they had changed the back story of the father's baseball career from college
26 coaching to scouting, seemingly lifting some of that camouflage from *Moneyball*,
27 which had just been released. Mr. Brooks looked up the credited writer, Mr.
28

1 Brown, on IMDB, and saw he had only one formal writing credit that was over a
2 decade ago. It was for episodic television and comedy. He also saw Brown had
3 spent the past many years following a separation from his wife devoting his time to
4 a musical band called the *Neighbors*, who were playing small venues in Los
5 Angeles and Las Vegas. Finally, Mr. Brooks looked up who was representing Mr.
6 Brown. Mr. Brooks discovered in time that Mr. Brown had the exact same agent at
7 that time as Mr. Handfield – Mr. Ferraro. Following months upon months of
8 investigation, Plaintiffs initiated this lawsuit.

9 **B. Don Handfield Wrote *Omaha* and the Script of *Trouble with the***
10 ***Curve* that Became the Movie**

11 First, as noted, there are scenes in *Trouble with the Curve* that are directly
12 tied to Ryan Brooks' own unique baseball life. He was hit in the head by Josh
13 Beckett in a baseball game. That was known in Texas by fans who followed them
14 both play, and shared many times with Don Handfield. Mr. Brooks took Mr.
15 Handfield to Rosenblatt's Stadium, where the College World Series was played
16 until it was closed a few years ago. It's known for many of its sandwiches and its
17 pastrami was one of Ryan's favorites. Ryan played third base his whole career. As
18 noted, there are direct and very specific references to each of these events from Mr.
19 Brooks' own life in *Trouble with the Curve*. Docket No. 76 at 2, 5, 6, 10 and
20 Docket No. 93 at 180, 224, 242.

21 Second, as noted, the entire father/daughter story and structure, especially as
22 more fully developed in later drafts of *Omaha*, in Mr. Brooks' final draft notes and
23 the concept reel, appears nearly identically in *Trouble with the Curve*. Three well-
24 credentialed experts have opined the two father/daughter stories are strikingly
25 similar. *See* Docket No. 73 at 11, Docket No. 93 at 14, Docket No. 96 at 8-9.
26 Third, and most importantly, two experts have opined that (a) Mr. Handfield
27 unequivocally is the author of the script upon which the movie *Trouble with the*
28

1 *Curve* is based, and (b) Mr. Brown is not the author of the script upon which that
2 movie was based. *See* Docket No. 93 at 14; Docket No. 96 at 6-7; Declaration of
3 David Yerkes (“Yerkes Decl.”) ¶2, Ex. 1; Declaration of Sheril Antonio (“Antonio
4 Decl.”) ¶12-13, Ex. 1.

5 Professor Yerkes is one of the leading authorship experts in the World. Not
6 that long ago it was his testimony that proved that an opinion issued by the
7 Philippines’ Supreme Court was in part authored by one of the parties to the suit.
8 *See* Liu Decl. Ex. G. In his two declarations submitted to this Court, Professor
9 Yerkes explains fully how he uses a process of analysis accepted throughout
10 Europe and the United States to determine authorship. It involves a time
11 consuming, exhausting review of the linguistic details of a person’s writings, which
12 are their writing “finger prints.” Interestingly, we each write linguistically a bit
13 different. To prove someone is the author of a work, one must study intensely the
14 linguistic details of writings it is agreed that person wrote and then study the
15 linguistic details of the work at issue. If these linguistic details are consistent, you
16 have a match on authorship. *See* Yerkes Decl. ¶5. Professor Yerkes opined that not
17 only do *Omaha*, written by Defendant Handfield, and *Trouble with the Curve* share
18 an “overwhelming number of identical [linguistic] details, including many verbal
19 identities: *Omaha* and *Trouble* also share many identical sequences of identical
20 details. The odds against *Omaha* and *Trouble* sharing so many identical sequences
21 of identical [linguistic] details by chance are almost incalculable.” *See* Docket No.
22 93 at 13. Professor Yerkes has devoted over a hundred hours to this study.
23 Professor Yerkes further opines: I find obvious that Defendant Don Handfield
24 wrote the draft of *Omaha*, the draft of *Trouble with the Curve*, and the draft of his
25 other work (not in dispute) *Touchback*, given to me.

26 Professor Yerkes has since secured the few written works that are authentic
27 to Mr. Brown, and studied the linguistic details of his writing. He intensely studied
28 the linguistic details (writing DNA) of Mr. Brown’s various drafts of Mr. Brown’s

1 television script *Curveball*, and the other Mr. Brown scripts *Pug Dog* and *New*
2 *Catch*. Professor Yerkes opines for this Court as follows: Again, based upon all my
3 study and research, and based upon my experience, I conclude that Randy Brown is
4 not the author of the script *Trouble with the Curve*. See Yerkes Decl., ¶2. See
5 Docket No. 93 and Yerkes Decl., Ex. 1.

6 Professor Antonio of NYU's Tisch School of Arts reads thousands of scripts
7 and she gives courses on writing style and can note a writer's style as well as any in
8 her industry. She undertook to read most of Don Handfield's scripts, and the same
9 or more of Mr. Brown's authentic scripts as Professor Yerkes. She opines for this
10 Court that Mr. Handfield wrote both *Omaha* and *Trouble with the Curve* and that
11 she came to this conclusion by coming to recognize a distinctive manner in which
12 Mr. Handfield writes, which involves what she calls a "writing tic." See Docket 96
13 and Antonio Decl. Ex. 1.

14 The authorship issue is central to Defendants' Motion based on the prior
15 creation defense. If one agrees with Professors Yerkes and Antonio that Mr.
16 Handfield, and not Mr. Brown, wrote the draft of *Trouble with the Curve* upon
17 which the infringing film is based, then that would be squarely at odds with any
18 evidence suggesting that Mr. Brown created that script first.

19 **C. Defendants Have Fabricated the Prior Creation Defense**

20 **1. Forensic Analysis of the Floppy Disks**

21 The Patriot Group is comprised of former members of various United States
22 Government digital investigation and computer forensic teams. Trevor Reschke is
23 the member of the Patriot Group that carried out the investigation into the floppy
24 disks from which Mr. Brown printed the alleged drafts of *Trouble with the Curve* as
25 to which he and the other persons who have issued declarations on his behalf refer
26 when they testify they read and saw one or more of these drafts back in 1996-2000.
27 Because no witness to date has offered the original of any documents to which they
28 refer but only copies, the examination of these floppy disks became necessary. This

1 was even more so because Defendants offered these floppy discs as dispositive
2 evidence of their prior creation argument. *See* Reschke Decl. ¶2, Ex. 1.

3 Mr. Reschke was a Counterintelligence Agent for the United States Army
4 between 1995 and 2001. He has specialized training in carrying out digital
5 investigations. Mr. Reschke's experience in digital investigations included his role
6 in the reported analysis of computers belonging to known al-Qaeda terrorists. *See*
7 Reschke Decl., Ex. 1. At points in time, our safety has rested upon Mr. Reschke's
8 computer and digital investigations. Mr. Reschke's report fully lays out the
9 physical examination first carried out as to the disks, and then the subsequent
10 analysis conducted in accordance with the Daubert standards. His report is forty-
11 four (44) pages in length and detailed. His opinion is as follows: The forensic
12 examination conducted on the floppy disks detailed in this report lead me to believe
13 they have been manipulated to provide the appearance of disks used from 1990 to
14 2003; they contain system information not consistent with the dates of usage
15 suggested by the date time stamp present, manipulated date time stamps, signs of
16 file wiping, and indications of activity that is not plausible. There are various
17 anomalies and indicators that these discs were manipulated to look as if they were
18 truly being used at the time periods alleged, when based upon our examination this
19 was not plausible or possible for the reasons stated in this report. *See* Reschke
20 Decl. ¶5, Ex. 2.

21 Mr. Reschke offers additional specific findings, such as the fact that the discs
22 had inconsistent and not plausible last access times that strongly suggested to Mr.
23 Reschke that date time stamp manipulation had taken place. This was done by
24 Defendants to give the appearance something was created at a time other than it
25 really was created.⁴ One of the disks had a unique "identification value" that is
26 normally created by a specific system process by an operating system function, but
27 that particular operating system was released publicly after data had allegedly been
28

1 written to the disk. Also, manufacturer information from Imation indicates they
2 only made 3M Imation 3.5 inch disks between the years 1999 and 2001. All files
3 on one of the examined 3M Imation disks analyzed predate this period. This is
4 simply an implausible observation. *See* Reschke Decl. ¶5, Ex. 2.

5 Additionally, Mr. Reschke found that six (6) files have date time stamps that
6 indicate they were written to the disk at speeds that were not possible on the
7 hardware that was used on the dates purported by Mr. Brown. Also, a unique data
8 pattern was identified on one of the disks that is linked to a “cleaning” or “wiping”
9 scheme. This was particularly alarming to Mr. Reschke because Mr. Brown
10 testified that he did not know what a “cleaning” or “wiping” system was and had
11 never used one. More alarming was that Mr. Brown said some “computer
12 professional” showed up at his house, took some discs, never to return them. *See*
13 Liu Decl, Ex. F, p. 100.

14 Mr. Reschke further found other inconsistent date of creation time stamps on
15 many of the files, some possessing identical date time stamps which raises all kinds
16 of issues given Mr. Brown testified he simply worked off a standalone desk top on
17 his own. Of further significance was the observation that one of the disk labels was
18 fastened over and around the protective covering on one disk in such a way it would
19 prevent the disk from being used without cutting the label. This is due to the
20 protective cover being rendered non-movable eliminating the ability for the disk
21 drive to access the actual disk. As presented, files were in fact written to this disk
22 over various periods of time, and yet this improperly fastened label that was
23 blocking the disk from being used had file names written on it that were with
24 different inks so as to appear they were written over different times too. However,
25 this visual presentation of all the different file names written on the label using
26 different inks to suggest the disk was being put in and out over a period of time is
27 not plausible.

28 ⁴ Counsel requests an evidentiary hearing after a reasonable period for the taking of factual and expert discovery.

1 This analysis also uncovered that there was a file present on all of the
2 Macintosh disks that contains data suggesting the original 1st generation of the
3 Macintosh operating system from 1984 was used to create it. This contradicts the
4 testimony of Mr. Brown as to which computers were used, and when they were
5 used to create the files on these disks. Additionally, a floppy disc contains a folder
6 named *Trouble with the Curve* that has a creation date of 1993. Yet, Mr. Brown
7 was very clear in his deposition that he had not considered writing any part of
8 *Trouble with the Curve* until late January 1996. One cannot create a folder for a
9 project they have not thought of yet. *See* Reschke Decl. ¶ 5, Ex. 2.

10 **2. Forensic Analysis of the Spiral Notebooks with Alleged**
11 **1997-98 Handwritten Notes and the Circa 1998 Innovative**
12 **Arts Script**

13 Larry Stewart is a Chief Forensic Scientist with decades of experience in
14 determining the ages of ball point ink including his work with the United States
15 Secret Service. Mr. Stewart first physically examined two spiral notebooks turned
16 over to Plaintiffs' counsel months after the Complaint was filed and seemingly in
17 reaction to expert declarations supporting Plaintiffs' Motion for Partial Summary
18 Adjudication in which the point was made that Defendants had yet to produce a
19 single document that could be aged for authenticity. Shortly after, two spiral bound
20 notebooks full of handwritten notes in all kinds of different inks were made
21 available for inspection out of the blue. Mr. Stewart was retained to do the forensic
22 work. He was first surprised to find sixty (60) pages torn out of the two notebooks.
23 While some tear outs are to be expected this was a high number and hence imprints
24 or "lifts" have been taken to see what was on those pages and that study is
25 underway still.⁵ However, Mr. Stewart went on to age some of the ink on the
26 pages, and he took many, many samples and more than normal, to assure a reliable

27 _____
28 ⁵ Another expert is working on deciphering what was written on the pages torn out. The hope is that work will be done before the hearing in this matter or any evidentiary hearing set by this Court.

1 process, and he performed very technical tests that are explained in his
2 accompanying report and declaration. Mr. Stewart found as follows: It's probable
3 that ink found within Exhibit Q2 and Q3 spiral notebooks was not placed in those
4 notebooks during 1997-1998, but instead within the last two years. *See* Stewart
5 Decl. ¶169.

6 He further found upon his investigation that the commercial availability of
7 the spiral notebooks themselves indicates this brand of notebooks were not even
8 available during 1997-1998, the dates written within the notebooks to suggest the
9 date the notes were made. *See* Stewart Decl. ¶22. He also concluded that it was
10 probable the toner used to create the Innovative Arts script of *Trouble with the*
11 *Curve* supposedly printed out circa 1998 and kept by Mr. Brown at his house is
12 toner from an office machine system that did not even exist in March 1998 (the
13 creation date on the document), but instead was not first commercially available
14 until September 2001. *See* Stewart Decl. ¶23. Mr. Stewart's report is forty six (46)
15 pages in length and in it he walks the Court through the exact samples taken, the
16 chain of custody, the exact aging carried out, and the manner in which his results
17 were obtained consistent with Daubert standards. In summary, he concludes: After
18 consideration of all of the results, this examiner is virtually certain (highly probable
19 opinion) that the Exhibit Q1 through Q4 document collection was not produced in
20 1997-98, but instead much more recently.

21 3. Forensic Analysis of Handwriting on the Floppy Disc Labels

22 Randy Brown testified that he was the only one to use and label the floppy
23 disks at issue. *See* Liu Decl. Ex. F, p. 91, ln. 12-14. Frank Hicks, an American Board
24 Forensic Document Examiner, with decades of crime lab experience, examined the
25 handwriting on the limited original documents selectively given in drips and drops
26 to Plaintiffs by Defense counsel. He has opined that in fact, the labels were written
27 by more than one person, at least two, if not more. *See* Declaration of Frank Hicks
28 ("Hicks Decl.") ¶ 4.

1 **4. Brown’s Inconsistent Prior Public Statements**

2 Despite Mr. Brown’s claimed authorship of a major motion picture starring
3 Clint Eastwood and Amy Adams, and the fact this lifted him out of a near ten year
4 layoff where he made no money from his writing, the Defendants did not publicize
5 his “from out of nowhere” story at all. Mr. Brown only gave two interviews and
6 one was at the Santa Barbara Film Festival where Michelle Weisler sat right by his
7 side and answered a lot of the questions for him, and the other was over the phone
8 with a Professor who teaches about sports movies, Robert Edelman *See* Liu Decl.
9 Ex. A, B.

10 In both interviews, the interviewers pressed Mr. Brown as to when he created
11 the script and also inquired about its relationship to the just previously released film
12 *Moneyball*. Mr. Brown gave both interviews in October 2012. He said in both that
13 he wrote the first draft of *Trouble with the Curve* about ten years earlier. He used
14 the exact same words each time. *Id.* He made a noticeable effort to place the date
15 of creation one year before the book entitled *Moneyball* was published, and he sure
16 did not say at that time that he had been writing the script for some 16 to 20 years.
17 In the interview over the phone by Professor Robert Edelman, Mr. Edelman asked
18 Mr. Brown how he knew to write about scouting, and Mr. Brown said he was
19 “embarrassed to admit” he had never met with a scout or gone to see them at work,
20 or gone to a game with them. *See* Liu Decl. Ex. B Now, Mr. Brown is stating he
21 first wrote the script that became the movie *Trouble with the Curve* in 1993 or
22 1996. *See* Liu Decl. Ex. F, p. 108, ln. 18-20. That is a sea change, and Mr. Brown
23 had no explanation for it in his deposition, but rather admitted he was being honest
24 when interviewed.

25 **5. The “Smoking Gun” *Moneyball* Scene**

26 Whoever of the named Defendants (and those who have yet to be named)
27 made the decision to use Mr. Brown’s unheralded comedy called *Trouble with the*
28 *Curve* to house the copied father/daughter baseball story from *Omaha*, and to cloak

1 it in a different baseball backdrop, necessarily made the decision to ditch the
2 college baseball back story found in *Omaha* and go with an MLB scouting
3 backdrop. Yet, none of them apparently knew the first thing about professional
4 scouting. As luck would have it for them, a year before *Trouble with the Curve*
5 went into production, the very successful film *Moneyball* had been released. The
6 film, based loosely on the book of the same title, featured a character modeled after
7 Paul DePodesta: a young Ivy League graduate, carrying a wireless lap top
8 everywhere he went, spouting out statistics and relying on the computer and those
9 advanced statistical baseball metrics to evaluate players. See Docket 66-4 at 3,
10 Docket 66-5 at 2, Liu Decl. Ex. D. Whoever copied the *Omaha* father/daughter
11 baseball drama seems to have borrowed a bit from *Moneyball* too. There is a scene
12 in nearly all the scripts Defendants fabricated to look like progressive drafts
13 prepared from 1996- 2000 that depicts a young Scouting Director carrying around a
14 wireless lap top, and talking about real time “look-ins” to low level minor league
15 games. That character is named Phillip in the scripts at issue and he argues in many
16 scenes that one can use the statistical metrics of a player’s performance taken off
17 the laptop to scout and evaluate the player. This becomes a debate in the film.
18 While these *Moneyball*-like scenes are in scripts printed off of Mr. Brown’s floppy
19 discs with alleged creation dates of 1996-2000, these scenes could not have been
20 written any earlier than 2004.

21 For anyone familiar with the Michael Lewis book entitled *Moneyball*
22 released in 2003, and released as a movie September 2011, this scene touches on a
23 phenomena started in secret by Billy Beane and Paul DePodesta within the Oakland
24 Athletics scouting department, where DePodesta employed a laptop, some
25 advanced software and baseball statistics. Then, Mr. Lewis chose to investigate
26 how it was the Oakland Athletics, a small market team, were winning so many
27 games. Mr. Beane and the Oakland Athletics chose to allow only Mr. Lewis to see
28 what they were doing, which was unheard of: using Ivy League graduates to read

1 saber-metrics off their wireless lap top to make judgments on players to be drafted.
2 Mr. Lewis realized he was seeing something that would change baseball forever
3 and he worked in strict confidence about this process until he published the book
4 entitled *Moneyball* in 2003. This set off a debate within the “old school” executives
5 of the MLB and the new kids on the block with their lap tops and advanced
6 statistical metrics. *See* Docket 66-4 at 3, Docket 66-5 at 2. The point is that this
7 *Moneyball* scene starts showing up in early drafts printed out from Mr. Brown’s
8 suspect floppy discs. Mr. Brown dated the origination of these scenes under oath as
9 1997-98 – six or seven years before anyone knew about this new phenomenon. *See*
10 Liu Decl. Ex. F, p. 206, ln. 1-4. Mr. Brown could not write about something he
11 could not have known would occur.

12 **6. Brown Does Not Recall Motivation for Characters, When**
13 **Scenes Were Written, Which Fabricated Script is Which**

14 As for the primary story line -- the dysfunctional father/daughter relationship,
15 the tug of the father’s age and illness upon the daughter and their conflicted
16 experience as she moves back into her father’s baseball life in the last year of a long
17 career -- Mr. Brown admits he didn’t conceive any of that. *See* Liu Decl. Ex. F, p.
18 272, ln. 17-19. He suggests nameless, faceless persons in UCLA extension writing
19 courses on their own suggested that he radically change his light hearted *Trouble*
20 *with the Curve* comedy into a gripping, father/daughter baseball story rife with
21 conflict and drama. *Id* at p. 125, ln. 12-15. Mr. Brown simply never was able to
22 give credence to the notion he thought of this story line in his own head. *Id* at p.
23 245, ln. 23-25. Contrast this with Plaintiff Brooks’ explanation that his unique and
24 copyrighted story was born in his mind when his mother, while dying, shared she
25 grew up an only child and daughter estranged from her father, and how much this
26 haunted her. *See* Docket 99 at 2-3, 7. That story has specific roots that are genuine.

27 Mr. Brown could not remember the motivation for any of the characters.
28 When asked how he came up with the high school baseball third base recruit Bo, he

1 said he was born out of thin air, and not based on any research: “not based upon
2 anyone.” *See* Liu Decl. Ex. F, p. 263, ln 6-8. Even though he claims he made this
3 script his life for 16 plus years, he simply could not identify the time periods, other
4 than in the most wildly general sense, of when the scenes that formed the August
5 25, 2011 production script were written, or what independent motivation he himself
6 had when writing them. *See* Liu Decl. Ex. F, p. 180, ln. 9-13; p. 189, ln. 25; p. 257,
7 ln. 2-12; p. 263, ln. 6-8; p. 296, ln. 1. He did, however, take credit for the creative
8 decision that the father figure would smoke a cigar *See* Liu Decl. Ex. F, p. 187, ln.
9 7-9. (Found in Plaintiffs’ copyrighted concept reel given to Defendant Handfield).
10 *See* Brooks Decl. ¶10. But Defendant Robert Lorenz has stated publically that was
11 his idea. The conflict between the untold stories told by the defendants is common.⁶

12 **7. Brown did Not Know the Subject Matters of the Screenplay**
13 **and Admitted to doing Absolutely No Research**

14 Mr. Brown admitted he never played third base himself (the position the
15 recruited player “Bo” plays in the movie) as he gave up baseball when young for
16 acting. *See* Liu Decl. Ex. F, p. 20, ln. 10-11. He admitted to not knowing a scout
17 beyond one he claims to have called, at some unknown point, to talk over the phone
18 for just a few minutes, about things he cannot recall. *Id* at p. 213-214. He never
19 went to meet with a scout or to watch a game with one, or set a meeting with
20 anyone involved in Major League Baseball, and admits to doing no research on
21 these topics, at all, until talking with scouts hired by Defendant Warner Brothers
22 when the film was already being shot. *Id* at p. 199, ln. 8-17; p. 215, ln. 18-22. He
23 admitted he never attended a minor league, high school or college game at or near
24 the time he was writing these scripts, if ever. *Id.* p. 263, ln. 11-15.

25
26
27 ⁶ For example, Mr. Brown claimed that Defendant Jay Cohen knew his script cold and was pitching it himself once
28 he was with Kurt Russell’s and Goldie Hawn’s production company, Cosmic Entertainment, but Mr. Cohen said he
did no such thing but that a woman in their TV Department was striking out trying to get Mr. Brown’s light, comedy
picked up for a TV show or TV movie. Mr. Cohen admitted to not recalling the scenes within the scripts produced

1 **D. Brown Admitted Others Advised Script Changes in 2011 to Turn**
2 **The Light Comedy into a Tugging Drama**

3 Importantly, throughout Mr. Brown's deposition, he admitted that many
4 scenes were either written for the first time or rewritten to add drama and conflict to
5 the father/daughter story in 2011. That would be many years after Defendants had
6 access to *Omaha* (and they did because Mr. Handfield wrote both that script as a
7 work for hire, and the script from which the movie *Trouble with the Curve* was
8 made. Also, Defendant Ferraro, who also represents Mr. Brown, had access to
9 *Omaha* through his representation of Mr. Handfield.) These additions and rewrites
10 were not trite. They involved ditching some of the vestiges of Mr. Brown's
11 "cartoonish" scenes from the original comedy he wrote, and replacing it with more
12 father/daughter conflict scenes straight from *Omaha*. Mr. Brown admitted the film
13 that became the movie needed to make a sharp turn into a father/daughter baseball
14 drama, and that he did a lot of that writing in 2011 with Ms. Weisler. *See* Liu Decl.
15 Ex. F, p. 125, ln. 12-15; p. 159, ln. 21-25; p. 197, ln. 1-14.

16 **E. Brown Registered Other Works, but not This Script**

17 Defense counsel wish to ignore entirely the evidentiary significance of the
18 fact that Mr. Brown testified openly in his deposition he himself had a practice of
19 registering his few purchased spec scripts with the Writer's Guild, *Id* at p. 84, ln. 2-
20 6, and that he had representation capable of registering his scripts with the
21 Copyright Office. *Id*. He even admitted he knew of the practice of sending a script
22 to one's self in a postmarked, sealed envelope and not opening it unless needed.
23 However, he just as openly admitted that not a single draft of the scripts he has put
24 forth by way of his floppy disks was ever registered. *Id* at p. 144, ln. 10-16, p. 146.,
25 ln. 1, p. 157, ln. 14-16; p. 168, ln. 8-12. He has no explanation.

26
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28

by Mr. Brown. *See* Liu Decl. Ex. F, p. 154-156; Liu Decl. Ex. G, p. 55-59

1 **F. The Defense Declarations Are Tied to Fabricated Evidence and**
2 **Reliant Thereon**

3 Each of the Defense declarations fails to attach or offer for inspection an
4 original document. They each have infirmities. Mr. Landau says that Mr. Brown
5 took his formal class at UCLA extension around 1992 or so. *See* Docket 100 at 2.
6 But Mr. Brown was reminded through documents given to him at his deposition
7 that he did not walk into Mr. Landau's class until January 18, 1996. *See* Liu Decl.
8 Ex. F, p. 108, ln. 18-20. Mr. Brown and Mr. Landau are so tight that Mr. Brown
9 endorsed Mr. Landau's book entitled *A Screenwriter's Roadmap*, and admitted he
10 did so without reading the book. *Id* at p. 86, lines 1-5. Mr. Landau does not address
11 any of the specific scenes that Plaintiffs claim were infringed, nor do any of the
12 others who gave declarations. Mr. Sheinberg offers a picture of a bound script he
13 supposedly has but has not produced the actual document.

14 Ms. Gadsby writes a short declaration in which she states she was doing
15 freelance work for the Bubble Factory at the time she provided the coverage report
16 (handed over quite a bit after the Complaint was filed) on Mr. Brown's script. She
17 says she sent the coverage report by fax from a friend's office at Everest Pictures.
18 What Ms. Gadsby fails to share with the Court is that in point of fact during the
19 time she was supposedly doing coverage work for the Bubble Factory she was in
20 truth heading up Oliver Stone's production company, Illusion Entertainment. Her
21 own LinkedIn account shows that she herself did work for Everest but that was
22 back in 1993-1995 (before Mr. Brown says he wrote the script.). The idea that Ms.
23 Gadsby would be working for a direct competitor of the Bubble Factory in a high
24 level job for a demanding director/producer, and still be sending out a coverage
25 report to the Bubble Factory for a script penned by an unknown writer is farfetched.
26 The idea she would leave her own office and send it from another competitor's
27 office by fax at 7:30 p.m. at night is a stretch too. While Ms. Gadsby says that she
28 sent it from a "friend's office," she intentionally does not name the friend. Plus,

1 her claimed coverage report is supposed to be about the script given Mr. Sheinberg,
2 but neither her report nor his declaration square.

3 Given Plaintiffs' forensic experts opine in detail that Defendants' evidence
4 is fabricated, and the floppy discs are compromised, manipulated and fabricated.
5 (*See* Reschke Decl. Ex. 1, Stewart Decl., Hicks Decl.), all of this evidence becomes
6 suspect. Further, all these declarations are also squarely at odds with the opinions
7 of Professor Yerkes and Antonio that Don Handfield unequivocally wrote the script
8 from which the movie *Trouble with the Curve* was made, and Brown's own public
9 statements he did not start writing these scripts until 2002, and the fact that every
10 one of the scripts referenced has a scene right out of the book/movie *Moneyball*
11 which could not have been written by anyone until 2004-2005.

12 III. Legal Argument

13 A. The Facts Are to Be Viewed In a Light Most Favorable to 14 Plaintiffs

15 The law requires that when the court is considering a case dispositive motion
16 such as this, it is to review the facts in a light most favorable to the nonmoving
17 party. *Matsushita Electric Industrial Co. v. Zenith Radio Corp.*, 475 U. S. 574, 587
18 (1986); *Cleary v. News Corp.*, 30 F.3d 1255, 1259 (9th Cir. 1994). This would
19 entail considering all the expert reports and other facts presented.⁷

20 B. Defendants Failed to Carry Their Burden to Prove Plaintiffs 21 Copied Their Alleged Prior Creation/Work

22 Under 17 U.S.C. § 410(c) Plaintiffs' registration certificate constitutes prima
23 facie evidence of the validity of the copyrights in *Omaha*. *North Coast Industries*
24 *v. Jason Maxwell, Inc.*, 972 F.2d 1031, 1033 (9th Cir. 1992). Since originality is
25 required for validity, the copyright registration certificate is prima facie evidence of
26 originality. *Smith v. Jackson*, 84 F.3d 1213, 1219 (9th Cir. 1996); *Masquerade*

27
28 ⁷ This includes the declarations of David Yerkes, Gerard Fox, Gerald Hunsicker, Jeffrey Liu, Richard Walter, Ryan Brooks, Sheril Antonio, Trevor Reschke, and Tal Smith filed in support of Plaintiffs' Motion for Summary

1 *Novelty v. Unique Industries*, 912 F.2d 663, 669 (3d Cir. 1990). To overcome the
2 burden of this statutory presumption of originality, Defendants must prove that
3 Plaintiffs' product was copied from a prior source. *North Coast Industries, supra*,
4 972 F.2d at 1033; *Masquerade Novelty, Inc.*, *supra*, 912 F.2d at 669. Defendants
5 must show that plaintiffs copied the "idea" of the prior source and its "expression."
6 *North Coast Industries, id.*; *Leeds Music Limited v. Robin*, 358 F.Supp. 650, 659–
7 60 (S.D.O. 1973). Defendants have made no such showing and thus have not made
8 the required showing under the summary judgment standard articulated herein
9 above.

10 **C. Defendants' Cited Cases Are Distinguishable**

11 None of the cases cited by Defendants presented the type and depth of
12 forensic reports, expert opinions and fact based declarations as has been presented
13 to the Court in this instance and certain of those cases involved rulings after
14 discovery. For example, Defendants cite *Cottrill v. Spears*, 87 F. App'x 803 (3d
15 Cir. 2004), a case in which the court granted summary judgment in favor of the
16 Defendant where there was testimony that singer Britney Spears created her work
17 before the Plaintiffs' work was created. Unlike in *Cottrill*, here due to the results of
18 forensic testing it is in dispute whether the earlier-created scripts are genuine.
19 Further, if parts of *Trouble with the Curve* were indeed, as Plaintiffs contend,
20 created after *Omaha*, then there still remains the issue of potential copying and
21 similarity of the resulting work. Defendants' other cases are distinguishable as
22 well. See *Fogerty v. MGM Grp. Holdings Corp.*, 379 F.3d 348 (6th
23 Cir.2004)(where, unlike here, Plaintiffs did not offer evidence to support the
24 proposition that the works are so strikingly similar that copying was the only
25 plausible explanation of the similarities); *Bauer v. Yellen*, 548 F. Supp. 2d 88
26 (S.D.N.Y. 2008)(a case in which the Defendants' script had five prior registrations
27 with the WGA, whereas here, there are no prior registrations); *Weygand v. CBS*,

28 _____
Adjudication which are incorporated herein by reference.

1 1997 U.S. Dist. LEXIS 10613 (C.D. Cal. May 20, 1997)(which notes that summary
2 judgment is inappropriate where, as here, credibility is at issue); *Bernal*, 788 F.
3 Supp. 2d at 1054-55 (where, unlike here, the evidence that Defendants wrote earlier
4 drafts was undisputed); *Armour*, 512 F.3d at 154 (where, unlike here, the time
5 stamps on disks introduced as evidence were un-rebutted).

6 **D. There Exist Many Controverted Facts**

7 Defendants have not opposed Professor Yerkes' and Professor Antonio's
8 opinions and reports, each now having authored two, and their opinion that Don
9 Handfield is the author of *Trouble with the Curve*, and that Mr. Brown is not. Also,
10 notably, the forensic experts have offered clear and convincing proof that the
11 evidence upon which Defendants' motion is based is compromised and fabricated.
12 Mr. Brown's own inconsistent statements and the implausible contention he wrote
13 scenes about things about which he knew nothing, and about things that were not
14 yet known to anyone raises many genuine issues of material fact. Mr. Brooks and
15 Mr. Brown, and Mr. Handfield by implication, and the rest of the defendants by
16 association, disagree over whether the father/daughter story in *Trouble with the*
17 *Curve* is the one copyrighted and owned by Plaintiffs. There are a myriad of issues
18 that surround who wrote what and when. What should take place is a jury trial in
19 the next six months.

20 **IV. CONCLUSION**

21 For the foregoing reasons, the Warner Defendants' Motion for Summary
22 Judgment should be denied.

23 LAW OFFICES OF GERARD FOX, INC.

24
25 Date: January 27, 2014



26 _____
27 GERARD P. FOX
28 Attorney for Plaintiffs Gold Glove
Productions, LLC and Ryan A. Brooks

PROOF OF SERVICE

I am over the age of 18 years and not a party to this action. My business address is: Law Offices of Gerard Fox, Inc., 1880 Century Park East, Suite 600, Los Angeles, CA 90067.

On January 27, 2014, I served the following documents entitled:

PLAINTIFFS' OPPOSITION TO WARNER DEFENDANTS' MOTION FOR SUMMARY JUDGMENT

on the person(s) listed in the attached Service List. The documents were served by the following means:

<input type="checkbox"/>	OFFICE MAIL: By placing in sealed envelope(s), which I placed for collection and mailing today following ordinary business practices. I am readily familiar with this agency's practice for collections and processing of correspondence for mailing; such correspondence would be deposited with the U.S. Postal Service on the same day in the ordinary course of business.
<input type="checkbox"/>	PERSONAL DEPOSIT IN MAIL: By placing in sealed envelope(s), which I personally deposited with the U.S. Postal Service. Each such envelope was deposited with the U.S. Postal Service at Los Angeles, California, with first class postage thereon fully prepaid.
<input type="checkbox"/>	EXPRESS U.S. MAIL: Each such envelope was deposited in a facility regularly maintained at the U.S. Postal Service for receipt of Express Mail at Los Angeles, California, with Express Mail postage paid.
<input type="checkbox"/>	HAND DELIVERY: I caused to be hand delivered each such envelope to the office of the addressee as stated on the attached service list.
<input type="checkbox"/>	FEDERAL EXPRESS: By placing in sealed envelope(s) designated by Federal Express with delivery fees paid or provided for, which I deposited in a facility regularly maintained by Federal Express of delivered to a Federal Express courier, at Los Angeles, California.
<input type="checkbox"/>	ELECTRONIC MAIL: By transmitting the document by electronic mail to the electronic mail address as stated on the attached service list.
<input type="checkbox"/>	FAX: By transmitting the document by facsimile transmission. The transmission was reported as complete and without error.
<input checked="" type="checkbox"/>	By CM/ECF Electronic Service: I caused such document to be served via the Court's (NEF) electronic filing system on all registered parties.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on January 27, 2014



Cindy Hamilton

Service List

Joseph P. Costa Costa Abrams & Coate LLP 1221 2nd Street Third Floor Santa Monica, California 90401 Fax: 310 576-6160	Attorney for The Gersh Agency and Jay Cohen
Bryan Joel Freedman/ Jesse Kaplan Freedman & Taitelman, LLP 1901 Avenue of the stars, Ste. 500 Los Angeles, CA 90067 Fax: (310) 201-0045	Attorneys for United Talent Agency and Charles Ferraro
Matthew Kline/ Ashley Pearson O'Melveny & Myers LLP 1999 Avenue of the Stars, 7th Floor Los Angeles, California 90067 Fax: (310) 246-6779	Attorneys for Warner Bros. Pictures Inc., Malpasco Productions, Ltd., Warner Bros. Distributing Inc., Warner Bros. Home Entertainment Inc., Warner Bros. Domestic Television Distribution, Inc., TW UK Holdings, Inc., Robert Lorenz, Michele Weisler, and Randy Brown
Dale Robert Dela Torre/ Colby Petersen Jacobson, Russell, Saltz, Nassim& De La Torre 10866 Wilshire Blvd Ste 1550 Los Angeles, CA 90024 Fax: (310) 446-9909	Attorneys for Don Handfield and Tressa Difiglia Handfield